

# COMPENSATION ACT 2006

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS: PART 2

#### *Section 9 and The Schedule: Regulations*

65. This section gives the Secretary of State the power to make regulations about authorisations under section 5(1) and the functions of the Regulator. It also makes clear that transitional provisions may be included in regulations made under this section. The power to include provisions about the extent to which functions may be exercised in respect of matters arising before the commencement of a provision under this Part is intended only to give the Regulator a discretion to investigate complaints relating to an authorised person, where the subject matter of the complaint arose (or arose in part) in the period between the Act receiving Royal Assent and the person receiving authorisation.

#### **The Schedule – Claims management regulation**

66. This schedule gives further detail about provisions that may be included in regulations made by the Secretary of State under section 9 (about the authorisation of claims managers and the functions of the Regulator).

#### Waiver of requirement for authorisation

67. [Paragraph 3](#) allows provision for the Regulator to waive the requirement for authorisation in specified cases or circumstances. The Regulator may only grant a waiver if the Secretary of State intends to exempt the person under section 6. Waivers may only be granted for a single period of no more than six months. In exercising the power to waive the requirement for authorisation, the Regulator might attach conditions such as requiring that due regard is given to a code of practice.

#### Grant of authorisation

68. [Paragraphs 4 – 6](#) specify matters that may or must be included in regulations about the grant of authorisations. The regulations must specify the procedure for applying to the Regulator for authorisation to provide regulated claims management services. Regulations may require the applicant, or any person who appears to the Regulator to be connected with the applicant, to provide relevant information or documents. The Regulator is only able to grant authorisation if he is satisfied of the applicant's competence and suitability to provide the kinds of services to which the application relates. In order to assess this, the Regulator is required to apply the criteria (and have regard to the matters) which are specified in regulations. The Regulator may consider the suitability of persons expected to be employed or engaged by, or otherwise connected with, the applicant. For example, he may require personal information about those individuals who control a company (such as Directors and the Chief Executive). The criteria that the Regulator must apply in assessing the competence and suitability of an applicant may relate to:

- criminal records
- proceedings in any court or tribunal

*These notes refer to the Compensation Act 2006  
(c.29) which received Royal Assent on 25 July 2006*

- proceedings of a body exercising functions in relation to a trade or profession (such as an existing Regulator or Ombudsman)
- financial circumstances (for example measures to maintain solvency)
- management structure (for example a description of roles including responsibility for decision making and financial controls)
- actual or proposed connections or arrangements with other persons (for example a parent company or subsidiary) which might compromise the Regulator's effective supervision of the applicant
- qualifications
- actual or proposed arrangements for training
- arrangements for accounting
- practice or proposed practice in relation to the provision of information about fees (for example information about charges to be made for the provision of claims management services, or information about free alternative means of pursuing a claim)
- arrangements or proposed arrangement for holding client's money (for example the requirement for a separate client account)
- arrangements or proposed arrangements for insurance

The list is not exhaustive. Regulations may also permit the Regulator to grant authorisation subject to terms or conditions, or grant applications only to a specified extent or in relation to specified matters, cases or circumstances. This will enable the Regulator to determine the scope of a grant of authorisation by limiting the authorisation to providing the regulated services in relation to a particular types of claim (for example personal injury); or by specifying what types of services an authorised person may provide (for example prohibiting an authorised person from handling client money).

69. [Paragraph 7](#) specifically relates to regulations concerning fees. Regulations may enable the Regulator to charge fees and set out the consequences of failing to pay fees. Different levels of fees might be charged (which could depend on the business turnover) and the regulations may also permit the waiver, reduction or repayment of fees in specified circumstances. The Secretary of State has a power to prescribe or control the level of fees. The regulations may set out accounting and auditing requirements and make provision for the way in which income from fees might be used.

#### Conduct of authorised persons

70. [Paragraph 8](#) and [9](#) provide that regulations require the Regulator to make rules, and enable the Regulator to issue a code of practice, about the professional conduct of authorised persons. Regulations may specify the manner in which rules and codes of practice are to be prepared and published, and provide for consultation and approval by the Secretary of State. An authorised person's failure to comply with rules and/or a code of practice could be used as a basis for imposing conditions on, suspending or cancelling authorisations.
71. The rules might cover (for example) consumer protection (including handling clients' money, complaints procedures etc) registration requirements and procedures, advertising requirements, requirement to have indemnity insurance etc., also requirements about competence of individuals providing a claims management service.
72. Codes of practice are likely to cover matters such as organisational standards and behaviour.

73. [Paragraph 10](#) requires regulations to provide for the Regulator to investigate complaints about the conduct of authorised persons. Such an investigation may lead the Regulator to impose conditions on a person's authorisation, suspend a person's authorisation or cancel a person's authorisation.
74. [Paragraph 11](#) enables regulations to require an authorised person to take out professional indemnity insurance to cover any loss caused by his provision of regulated claims management services. Requirements about the level or nature of insurance cover may be included, together with provisions about the consequences of failure to comply. A failure to comply might result in the imposition of conditions, or the suspension or cancellation of authorisation.
75. [Paragraph 12](#) allows regulations to require the Regulator to establish a compensation scheme to cover loss to consumers suffered as a result of the actions of authorised persons. This would only cover circumstances where an authorised person receives money on behalf of a client in settlement of a claim and the client is unable to obtain the money from the authorised person (for example because the authorised person is insolvent). The funding of such a scheme will not be met by the Government.

#### Enforcement

76. Regulations under paragraph 13 may permit or require the Regulator to take specific action for the purpose of assessing compliance with terms or conditions of authorisation. For example, the Regulator might carry out periodic audits or require authorised persons to provide information at specified intervals.
77. Regulations as described at paragraph 14(1) permit the regulator to take action of a specified kind for the purpose of investigating a complaint about an authorised person or assessing compliance with the terms of authorisation.
78. [Paragraph 14\(2\)](#) allows regulations to provide for the regulator to be able to apply for a warrant, from a judge of the High Court, Circuit judge or justice of the peace, to search business premises of authorised persons to investigate complaints and assess compliance with conditions of authorisation.
79. Regulations under paragraph 14(3) may enable the Regulator to take copies of any papers and electronic records that pertain to the investigation of a suspected offence.
80. [Paragraph 14\(4\)](#) allows the Regulations to stipulate that the Regulator can impose penalties on those suspected of improper actions or withholding information relating to compliance. Such penalties would include the withdrawal or cancellation of all or part of an authority, either on a temporary or permanent basis. These penalties will be commensurate with the gravity of the offence.
81. [Paragraph 14\(5\)](#) indicates that references to the Regulator in paragraph 14 include persons authorised by him, in writing. This will enable persons to exercise enforcement powers on his behalf. This might be a private investigator or other relevant professional.
82. Regulations under paragraph 14(6) must specify the supporting evidence needed by a judge or justice of the peace to satisfy them that a warrant should be issued. This might include the reasons to believe an offence has occurred, the steps taken to procure the evidence needed, and any corroborative evidence available should the complaint stem from an anonymous source. These regulations must also detail the circumstances in which the powers in paragraphs 14(1), (2) and (3) can be used. This could include the requirement for a formal approach to be made requesting information and a period within which an individual must comply before the power to enter premises can be used. They may also specify conditions to be complied with when these powers are used (for example entry to premises only during office hours).
83. [Paragraph 15](#) permits regulations to be made about the exercise of a power under section 8 (which provides a mechanism for enforcement and investigation of suspected offences by unauthorised persons).